

AGREEMENT OF LEASE

This Lease made as of October 20, 1992 by and between THE UNITED STATES OF AMERICA, acting by and through the General Services Administration, an executive agency of the United States of America, as Lessor (hereinafter referred to as "Landlord"), and THE SMITHSONIAN INSTITUTION, a trust instrumentality of the United States of America, as Lessee (hereinafter referred to as "Tenant").

WHEREAS, the United States of America is the owner of the premises known as the Alexander Hamilton United States Custom House located at One Bowling Green in the Borough of Manhattan in the City and State of New York; and

WHEREAS, Landlord operates and maintains such premises; and

WHEREAS, pursuant to Public Law 101-185 passed by the United States Congress on November 28, 1989 (the "NMAI Act") Landlord and Tenant entered into a Memorandum of Understanding dated June 11, 1991 which provided that Landlord would lease a portion of the Alexander Hamilton United States Custom House to Tenant for use by the Gustav Heye Center of the National Museum of the American Indian (the "Museum"); and

WHEREAS, this Lease is entered into for the express purpose of enabling Tenant to develop the Leasehold Premises (as hereinafter defined) for use by the Museum;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Lease, the following terms shall have the respective meanings hereinafter specified:

"Additional Rent" means an amount equal to Tenant's Share of Operating Expenses.

"Alterations" shall have the meaning set forth in Section 7.01.

"Auditorium" means the auditorium to be constructed in the basement of the Building marked as the Auditorium, Room B90, on Exhibit A annexed hereto.

"Base Rent" shall have the meaning set forth in Section 4.01.

"Breach of the Lease Terms" shall have the meaning set forth in Section 19.01.

"Building" means the building known as the Alexander Hamilton United States Custom House located at One Bowling Green in the Borough of Manhattan in the City and State of New York; all Equipment and other improvements and appurtenances of every kind and description now located or hereafter created, constructed or placed therein; and any and all alterations,

replacements and additions thereof or thereto and substitutions therefor.

"Business Day" means a day other than a Saturday, Sunday or a day on which the offices of Tenant or Landlord are authorized to close.

"Casualty" means that the Building or any part thereof is destroyed or damaged by fire or casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen.

"City" means The City of New York.

"Collector's Reception Room" means the rooms in the northwest corner of the Building marked as the Collector's Reception Room and the Collector's Reception Ante-Room, Rooms G214 and 216, respectively, on Exhibit A annexed hereto.

"Commencement Date" shall have the meaning set forth in Article 3.

"Common Floor Area" means the number of square feet of space comprising the Public Areas and the Shared Facilities, which for the purposes of this Lease has been determined by Landlord and Tenant to comprise 54,500 square feet.

"Contractor" means any person, firm or corporation, including the General Contractor, other than employees or agents of Tenant, who or which contracts with Tenant and/or with the General Contractor on behalf of Tenant for construction work to furnish, or actually furnishes, labor, or labor and materials, or labor and equipment, for the performance of Tenant's Work.

"Early Expiration Date" shall have the meaning set forth in Article 3.

"Equipment" means all fixtures incorporated in the Alexander Hamilton United States Custom House, including, but not limited to, machinery, apparatus, devices, motors, engines, dynamos, boilers, burners, pumps, elevators, hoists, compressors, ducts, pipes, conduits, fittings and wiring; heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; partitions, doors, cabinets and hardware; and all additions thereto or replacements thereof.

"Expiration Date" shall have the meaning set forth in Article 3.

"Extension Period" shall have the meaning set forth in Article 3.

"Exterior Space" means the sidewalks adjacent to the Building to the curb lines of the adjacent streets and the plaza facing the north side of the Building.

"Federal Buildings Fund" means the fund established by Section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)) (the "Property and Administrative Services Act").

"Final Plans and Specifications" means those 100% drawings and specifications, which detail Tenant's Work to be performed at the Building, as listed in Exhibit B annexed hereto and as annotated by comments on such drawings and by William Raczko's memorandum dated October 19, 1992.

"Fixed Expiration Date" shall have the meaning set forth in Article 3.

"Floor Area of the Building" means the total number of square feet of space comprising the Building, which for the purposes of this Lease has been determined by Landlord and Tenant to comprise 516,000 square feet.⁴

"General Contractor" means the general contractor engaged by Tenant for the performance of Tenant's Work.

"Grand Stair" means the staircase ascending from the exterior of the Building to the entrance to the Great Hall marked as the Grand Stair on Exhibit A annexed hereto.

"Great Hall" means the hall on the first floor of the north side of the Building marked as the Great Hall on Exhibit A annexed hereto.

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"Initial Term" shall have the meaning set forth in Article 3.

"Interim Period" means any period of less than a full Lease Year following the Rent Commencement Date and prior to the commencement of the first full Lease Year of this Lease.

"Landlord" shall have the meaning set forth in the first paragraph hereof.

"Landlord's Floor Area" means the number of square feet of space comprising Landlord's Premises, which for the purposes of this Lease has been determined by Landlord and Tenant to comprise 393,000 square feet.

"Landlord's Percentage of Common Floor Area" means fifty per cent (50%), which represents Landlord's and Tenant's agreement as to Landlord's proportionate use of the Common Floor Area; provided, that the above percentage shall be recomputed based

upon the agreement of Landlord and Tenant if it is necessary to accurately reflect modifications in Landlord's and Tenant's proportionate use of the Common Floor Area.

"Landlord's Premises" means the third through seventh floors of the Building and all other portions of the Building other than the Leasehold Premises, the Public Areas and the Shared Facilities, marked as Landlord's Premises on Exhibit A annexed hereto.

"Landlord's Representative(s)" shall have the meaning set forth in Section 6.06.

"Landlord's Share" of Operating Expenses means (1) the

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"Landlord's Work" shall have the meaning set forth in Section 6.01.

"Lease" means this lease and all exhibits hereto and all amendments, modifications and supplements thereof.

"Lease Year" means the period of twelve consecutive full calendar months beginning on the October 1st immediately following the Rent Commencement Date and the succeeding anniversaries thereof, including any Extension Period.

"Leasehold Premises" means the space in the Building marked as Leasehold Premises on Exhibit A annexed hereto.

"Loading Dock" means the loading dock to be renovated by Landlord at street level on the south side of the Building marked as the Loading Dock, Room 153, on Exhibit A annexed hereto.

"Main Hall" means the hall and lobby area on the ground floor of the north side of the Building marked as the Main Hall, Room G111, on Exhibit A annexed hereto.

"Material Change Orders" shall have the meaning set forth in Section 6.04.

"Monthly Review" means the meeting of the parties with the General Contractor to review the general progress of Tenant's Work pursuant to Section 6.05.

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"Museum" shall have the meaning set forth in the third "WHEREAS" clause hereof.

"NMAI Act" shall have the meaning set forth in the third "WHEREAS" clause hereof.

"NMAI Implementation Agreement" means that agreement entered into by the State, the City and Tenant on June 24, 1991 in connection with the NMAI Act.

"Operating Expenses" shall have the meaning set forth in Section 4.03.

"Permanent Leasehold Improvements" shall have the meaning set forth in Section 21.03.

"Personal Property" shall have the meaning set forth in Section 10.03.

"Public Areas" means the Collector's Reception Room, the Grand Stair, the Great Hall, the Main Hall, the Rotunda and all other space in the Building marked as Public Areas on Exhibit A annexed hereto.

"Rent Commencement Date" shall have the meaning set forth in Section 4.02.

"Rental" means Base Rent, Additional Rent and any other amounts which Tenant is obligated to pay Landlord hereunder.

"Requirements" shall have the meaning set forth in Article 16.

"Restoration" means any reconstruction, renovation, replacement, rebuilding or repair of the Building or any part thereof following a Casualty.

"Restore" means to reconstruct, renovate, replace, rebuild or repair the Building or any part thereof following a Casualty.

"Rotunda" means the room marked as the Rotunda, Room G204, on Exhibit A annexed hereto.

"Rules and Regulations" means the rules and regulations for the operation of the Building and the Leasehold Premises now posted in the Building, as the same may be amended, and the rules and regulations governing public buildings and grounds set forth in 41 CFR 101-20 et seq., Management of Buildings and Grounds, as the same may be amended.

"Shared Facilities" means the Auditorium, the Loading Dock and all other space in the subbasement, the basement, and the

first and second floors of the Building (other than the Public Areas) marked as Shared Facilities on Exhibit A annexed hereto furnished by Landlord for the non-exclusive use or benefit, in common, by all tenants and occupants of the Building, their officers, agents, employees, customers, deliverymen and invitees, including, without limitation, bathroom and lavatory facilities, lobbies, hallways, stairways, elevators, utility mains, risers, lines, poles, pipes, conduits and meters serving all or portions of the Building (other than bathroom and lavatory facilities, elevators, and branch or service lines or meters serving or measuring utility services exclusively for particular tenants or occupants of the Building).

"Standards of the Secretary of the Interior" means the Secretary of the Interior's Standards and Guidelines for Historic Preservation Projects, 36 CFR 68 et seq., as the same may be amended.

"State" means the State of New York.

"Substantial Completion" or "Substantially Complete" means that Landlord and Tenant have mutually agreed that all of Tenant's Work or Landlord's Work, as the case may be, is complete notwithstanding the fact that: (a) minor or insubstantial details of construction, mechanical adjustments or decorations remain to be performed, the non-completion of which does not materially interfere with the use of the Leasehold Premises, the Public Areas and/or the Shared Facilities, and (b) alterations that do not relate directly to Tenant's ability to occupy the Leasehold Premises and use the same for their intended purpose (e.g., work

to be performed on the exterior of the Building) remain to be performed.

"Substantially Damaged or Destroyed" means that the Building is damaged or destroyed by a Casualty and the cost of Restoration is in excess of Landlord's then current funding authority for the Building.

"Tenant" shall have the meaning set forth in the first paragraph hereof.

"Tenant's Floor Area" means the number of square feet of space comprising the Leasehold Premises, which for the purposes of this Lease has been determined by Landlord and Tenant to comprise 68,500 square feet.

"Tenant's Percentage of Common Floor Area" means fifty per cent (50%), which represents Landlord's and Tenant's agreement as to Tenant's proportionate use of the Common Floor Area; provided, that the above percentage shall be recomputed based upon the agreement of Landlord and Tenant if it is necessary to accurately reflect modifications in Landlord's and Tenant's proportionate use of the Common Floor Area.

"Tenant's Representative" shall have the meaning set forth in Section 6.05.

"Tenant's Share" of Operating Expenses means (1) the entire

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ARTICLE 2

DEMISE OF LEASEHOLD PREMISES

Subject to and upon the terms and conditions set forth herein, Landlord hereby leases and demises unto Tenant, and Tenant hereby hires from Landlord, the Leasehold Premises.

ARTICLE 3

TERM

The initial term of this Lease (the "Initial Term") shall commence on the date set forth above (the "Commencement Date"), and shall terminate at the end of the ninety-ninth consecutive calendar year following the Commencement Date, plus a period equal to the number of days, if any, from the Commencement Date (if other than the first day of a calendar month) through the last day of the month in which the Commencement Date occurs (such date, the "Fixed Expiration Date"); or, as may be applicable under the provisions hereof, on such earlier date as may result from the provisions hereof (the "Early Expiration Date") (the actual date of termination of this Lease, whether the Fixed Expiration Date or the Early Expiration Date, to be referred to as the "Expiration Date"). In addition, provided that this Lease shall then be in full force and effect and there shall not then exist any Breach of the Lease Terms hereunder, Tenant shall have additional renewal options after the Initial Term, each for a period of ninety-nine (99) years (each, an "Extension Period"),

which shall automatically become effective unless written notice of Tenant's intention not to renew this Lease is received by Landlord no later than one year prior to the first day of such Extension Period.

ARTICLE 4

RENTAL

Section 4.01 Base Rent: During each Lease Year of the Initial Term and the Extension Period following the Rent Commencement Date, Tenant shall pay to Landlord base rent ("Base Rent"), without demand, in annual installments of one dollar (\$1.00) in advance on the first day of each Lease Year.

Section 4.02 Additional Rent: (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

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Section 4.04 Place of Payment: Tenant shall pay all Rental by check of the United States Treasury payable to Landlord at the following address:

Office of Finance
General Services Administration
P.O. Box 70697
Chicago, Illinois 60673

or at such other address or addresses as Landlord may from time to time and in writing designate.

ARTICLE 5

USE; ACCESS

Section 5.01 Use: Tenant agrees to use the Leasehold Premises, the Shared Facilities and the Public Areas for the purpose of maintaining public museum galleries and related museum services and for no other purposes. The Museum will be open to the public between the hours of 10:00 AM and 5:00 PM seven days a week, 52 weeks a year, except for Christmas Day and any other day on which Federally owned and operated buildings are required to be closed due to lack of appropriations or other extraordinary circumstances; provided, that Tenant may open the Museum to the public for additional hours subject to the provisions of Section 9.07 and the Rules and Regulations. Museum staff, visitors and Tenant's agents and contractors will occupy the Leasehold Premises during public and non-public hours.

Section 5.02 Public Areas: (a) Landlord and Tenant recognize and acknowledge that the Museum will conduct public and special events in conjunction with its day to day activities in the Leasehold Premises. These events will include conferences, presentations, lectures and symposia where the purpose is informational and educational and the subject matter is related to the Museum's mission. (A copy of the Museum's mission statement is annexed hereto as Exhibit C.) Such additional events may include receptions, dinners or other occasions to

celebrate an exhibition opening, lecture or other special event. Tenant may use the Public Areas for such Museum sponsored activities; provided, that Tenant's use of the Main Hall and the Grand Stair shall be limited to the circulation of visitors and Museum staff, and provided further, that the Collector's Reception Room shall not be used for exhibits open to the general public. The painted and decorated surfaces in the Collector's Reception Room, the Great Hall and the Rotunda are fragile and subject to irreversible deterioration due to humidity and temperature variations. Landlord reserves the right to alter the use policy of these spaces if monitoring data indicates use restrictions are required to protect the decorated surfaces. No tobacco smoking, open flames or decorative candles shall be allowed in the above mentioned areas. No food or beverage service shall be allowed in the Collector's Reception Room without the express written consent of Landlord which may be withheld at Landlord's complete discretion. No food preparation, buffet or service for chafing dishes shall be allowed in the Great Hall or the Rotunda.

(b) Tenant shall make a written application to Landlord each time it wishes to use the Great Hall or the Rotunda for temporary exhibits or events. The application shall outline the proposed use, Tenant's security and custodial arrangements, the estimated number of attendees, and the specific time and duration of the exhibit or event. Landlord's decision as to whether to grant permission to use the space shall be based, *inter alia*, upon the nature of the proposed use, the timeliness of the request, use

requests from other parties, and the needs of Landlord's other Building tenants and other Federal agencies. Each request by Tenant or others will be reviewed by Landlord in a timely manner, and Landlord will promptly inform Tenant or others whether permission to hold the event is being granted or denied. If Landlord grants Tenant permission to hold the event, Landlord agrees to provide Tenant an estimate in advance of the Operating Expenses to be incurred in connection with the event, including Tenant's Share of such Operating Expenses, and to notify Tenant of any additional staffing and related requirements to be imposed by Landlord in connection with the event. Landlord's permission to use the space shall not be unreasonably withheld. Landlord will notify Tenant of the requests of others, and will give Tenant an opportunity to comment regarding such proposed uses. Landlord agrees that it will not issue permits for use of the Public Areas that would be harmful to the mission and purposes of the Museum. Upon approval of a request by Landlord, Landlord will notify Tenant of such approval and place information regarding the event on a master calendar maintained by Landlord's building operations representative. Landlord and Tenant will notify each other in the event of any changes to a scheduled event, including logistical arrangements, scope and scale, and security arrangements. Landlord will review such proposed changes in a timely manner and determine whether to continue its permission to hold the event under the new terms. Permission to mount a temporary exhibit does not grant Tenant exclusive use of the space during the duration of the exhibit; provided, that

Landlord will not grant permission to use the space to other parties if such use would materially interfere with Tenant's previously approved use.

Section 5.03 Shared Facilities: Tenant shall schedule Auditorium events through Landlord. Landlord recognizes that the use of the Auditorium is an essential aspect of the Museum's mission and that the Museum has acquired and installed technically advanced projection equipment for use in conjunction with conferences, presentations, lectures, and symposia to be held in the Auditorium. Tenant's use of the Auditorium shall be subject to the use requests from Landlord's other Building tenants and other Federal agencies. However, in evaluating such requests Landlord shall also consider the importance of the Auditorium to the mission of the Museum. Projection equipment installed by Tenant in the Auditorium shall be available for use by other parties using the Auditorium provided that such equipment is operated by Tenant's employees or agents. Tenant may charge a reasonable fee for such use which reflects Tenant's costs of operating such equipment. Tenant shall be responsible for receiving its own deliveries and providing security at such times. If Landlord determines that Tenant's security is inadequate and jeopardizes Building security, Landlord shall notify Tenant in writing and provide Tenant the opportunity of supplementing its security at Tenant's sole cost and expense.

Section 5.04 Use of Leasehold Premises by External

Organizations: Notwithstanding the provisions of Section 5.01 hereof, Tenant may allow external organizations to use the Leasehold Premises subject to the provisions of Section 9.07 and the Rules and Regulations; provided, that Tenant shall schedule, charge for and control such use in accordance with Tenant's standing policies for special events, and provided further that such use shall be related to Tenant's purposes, programs, or functional interests.

Section 5.05 Unlawful Use: Tenant shall not use or occupy the Leasehold Premises, or permit or suffer the Leasehold Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous use or purpose or in any way in violation of any Requirements or in such manner as may make void or voidable any insurance then in force with respect to the Leasehold Premises or the Building or so as to cause damage, annoyance or nuisance to the Building occupants or others. Tenant, immediately upon the discovery of any such prohibited use or purpose, shall take all necessary steps, legal and equitable, to compel the discontinuance thereof.

Section 5.06 Access:(a) The east street-level entrance on the north side of the Building, marked as Room G101 on Exhibit A annexed hereto, shall be dedicated for use by Landlord in order to facilitate access to the Building by Landlord, other Building tenants and their clients and visitors.

(b) The west street-level entrance on the north side of the Building, marked as Room G118 on Exhibit A annexed hereto, shall be dedicated for use by Tenant in order to facilitate access to the Building by school groups, disabled visitors and Museum staff.

(c) Tenant shall use the Grand Stair as the primary public entrance to the Museum.

Section 5.07 Landlord's Premises: Landlord will notify Tenant in the event that Landlord contemplates leasing any portion of Landlord's Premises to a non-federal tenant and will give Tenant an opportunity to comment regarding such proposed tenant.

ARTICLE 6

IMPROVEMENTS

Section 6.01 Landlord's Work: Landlord, at its cost and expense, subject to available appropriations, shall perform all items of work described as "Landlord's Work" in Exhibit D annexed hereto.

Section 6.02 Tenant's Work: (b) (4) (b) (4)(b) (4)(b) (4)(b) (4)(b) (4)

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(b) "Material Change Orders" shall be change orders that:

- (i) propose variations from the Final Plans and Specifications; and
- (ii) will materially affect the operation or maintenance of the Building or any of the Building's mechanical or utility systems.

Whenever a Material Change Order is initiated, a copy of the proposed change order shall be sent to Landlord by Tenant as soon as it is proposed. Landlord shall have twenty (20) Business Days from the date of receipt of the proposed change order to notify Tenant's Contracting Officer in writing of any objections to the change order and to set forth the basis for the objection.

Statements of objection may be sent by mail or telefax, but shall be received by Tenant's Contracting Officer no later than the end of the twentieth (20th) Business Day after receipt of the proposed change order by Landlord. Upon receipt of Landlord's objection, Tenant shall have twenty (20) Business Days to satisfy the objections of Landlord. If the parties reach an agreement, they will enter into a written agreement that formally withdraws the objection of Landlord and binds the parties to the solution.

Section 6.05 Reports: (a) Tenant shall provide to Landlord a monthly report documenting the progress of Tenant's Work, including minutes of job meetings and reproduced copies of photographs as appropriate. This report may be in the form of those reports prepared in the normal course of Tenant's construction projects including, without limitation, progress reports.

(b) Landlord and Tenant shall each provide to the other party hereto such other information as may reasonably be requested by it to keep such party informed about the advancement of Landlord's Work or Tenant's Work, as the case may be. Landlord and Tenant shall each employ a representative at the Building or have a representative available to coordinate their respective renovation activities.

(c) Landlord's Representative(s) shall have the opportunity to meet on a monthly basis with representatives of Tenant and the General Contractor to review the general progress of construction, to discuss change orders, progress payments, or any other aspect of Tenant's Work (the "Monthly Review"). The Monthly Review shall be held at the Building on the twenty-fifth (25th) day of each month or as mutually agreed upon by the parties.

(d) Tenant shall be entitled to designate a project representative(s) (the "Tenant's Representative(s)"). Tenant's Representative(s) shall have the opportunity to meet on a biweekly basis with representatives of Landlord and Landlord's general contractor to review the general progress of construction and to discuss change orders and any other aspects of Landlord's Work.

Section 6.06 Landlord's Representative(s): Landlord shall be entitled to designate a project representative(s) (the "Landlord's Representative(s)"). Landlord's Representative(s) may (but shall not be required to) participate in meetings concerning Tenant's Work. Tenant agrees to provide Landlord's

Representative(s) with timely notice of all construction meetings regarding Tenant's Work. Landlord's Representative(s)' participation, or failure to participate, shall not be deemed to waive the need for the written agreement of Landlord to the extent set forth in this Lease, or to shorten the time periods specified herein for such agreement to be obtained. During the progress of Tenant's Work and until the final completion of such work, but subject to such safety requirements as Tenant may reasonably impose, Tenant shall at all times provide Landlord's Representative(s) with the opportunity to inspect Tenant's Work completed or in progress.

Section 6.07 Tenant's Construction Contracts: (a) All of Tenant's Work shall be contracted for by Tenant and performed by its Contractors in accordance with its procurement authority and those requirements applicable to Tenant as set forth in Federal law and applicable to contractors performing work in Federally owned and operated buildings, and as reflected in the Smithsonian Construction Contract Clauses annexed hereto as Exhibit E.

(b) Tenant shall require its Contractors to obtain and maintain insurance in connection with the performance of Tenant's Work in accordance with clauses 17-20 of the Smithsonian Construction Contract Clauses annexed hereto as Exhibit E and the terms of paragraph 9 of the supplement to the Smithsonian Construction Contract Clauses annexed hereto as Exhibit F. Landlord shall be named as an additional insured on all insurance policies obtained pursuant to this Section 6.07 (b). Tenant's

Contractor(s) shall not be authorized to commence Tenant's Work until Landlord shall have been furnished with proof of the existence of such insurance.

(c) Tenant shall require its General Contractor to obtain performance and payment bonds for all contracts let in connection with Tenant's Work in accordance with the terms of clauses 14-16 of the Smithsonian Construction Contract Clauses annexed hereto as Exhibit E. Tenant's Contractors shall not be authorized to commence Tenant's Work until Landlord shall have been furnished with copies of such bonds.

Section 6.08 Historic Preservation Requirements: Tenant shall comply with applicable Federal historic preservation statutes in the performance of Tenant's Work, including, without limitation, the Standards of the Secretary of the Interior, such compliance to include, among other items, consultation with the State Historic Preservation Officer, the Advisory Council of Historic Preservation and the Landmarks Preservation Commission of the City of New York with regard to those matters within their respective jurisdiction. Landlord and Tenant will work together to coordinate clearances of all design work with appropriate agencies for historic preservation.

Section 6.09 Access for Persons with Disabilities: Tenant shall provide access to the Leasehold Premises for persons with disabilities as required by applicable Federal statute or regulation and shall provide Landlord with recommendations to

improve access to the Shared Facilities and Public Areas for persons with disabilities. Landlord shall, with consideration given to the historic fabric of the Building, use all reasonable efforts to assure that the renovations proposed as part of Landlord's Work will result in accessibility to the Building for persons with disabilities in accordance with Uniform Federal Accessibility Standards.

Section 6.10 Coordination by Landlord and Tenant of the Construction Work: (a) Landlord and Tenant will invite each other to participate in their design review processes for all utility and building systems.

(b) Landlord has invited Tenant to participate in design review of the Auditorium in order to ensure its serviceability for museum and other public purposes and its accessibility to persons with disabilities. Landlord has made modifications to the design necessary to meet Tenant's requirements for accessibility to persons with disabilities as indicated on Exhibit G annexed hereto. Tenant will reimburse Landlord as Rental for the additional costs for construction caused by modifications to the design of the Auditorium necessary to facilitate the installation of audio-visual equipment upgrades requested by Tenant up to a maximum amount of \$150,000.

(c) Landlord and Tenant shall coordinate the performance of all renovation and construction activity in the Building in order to (i) minimize interruption of installations of exhibits by Tenant, special events by Landlord and Tenant, the public opening

of the Museum, and normal Museum and Building operations, and
(ii) ensure against hazards to Museum artifacts and utility
support systems.

Section 6.11 As Built Drawings:

Upon Substantial Completion of Tenant's Work, Tenant shall
provide Landlord with a set of "as built" (actually constructed)
drawings for Tenant's Work. A set of "as built" drawings shall
also be maintained at the Building and available for review by
Landlord upon reasonable notice.

ARTICLE 7

ALTERATIONS

Section 7.01 Conditions Precedent to Alterations: Tenant
agrees that following completion of Tenant's Work no changes,
alterations, additions or construction work in or to the
Leasehold Premises (collectively "Alterations"), which will
materially affect the operation or maintenance of the Building or
any of the Building's mechanical or utility systems, shall be
undertaken by Tenant unless at the time and prior to the
commencement thereof:

- (i) Landlord shall have been furnished with detailed
plans and specifications for the proposed
Alterations and shall have approved the same; and
- (ii) Tenant's Contractors shall have furnished the
insurance and performance and payment bonds

required by Section 6.07(b) and Section 6.07(c), respectively, conforming in all respects to the other requirements of Section 6.07(b) and Section 6.07(c), respectively.

Section 7.02 Compliance with Requirements Governing

Alterations: Tenant, in making such Alterations, shall comply with the same requirements governing Tenant's Work as are set forth in Article 6, as well as with the Rules and Regulations and such other rules and regulations as Landlord may prescribe for the performance of such Alterations by Tenant and its Contractors. Tenant will not call upon Landlord for any costs or expenses connected with such Alterations.

Section 7.03 Landlord's Right to Inspect Alterations: At all times during the progress of such Alterations, Landlord shall have the right to have its representatives inspect the work being performed in the Leasehold Premises and to verify compliance with the plans and specifications therefor approved by Landlord.

Section 7.04 Historic Preservation: (a) With regard to each Alteration, as early in the planning process as is possible and in any event prior to the preparation of final design, Tenant, with Landlord's cooperation, shall provide the State Historic Preservation Officer and the New York City Landmarks Preservation Commission, with respect to areas under their respective jurisdictions, such information as they may reasonably require to

determine whether the work is in conformity with the Standards of the Secretary of the Interior. Tenant shall also provide Landlord with such information.

(b) The provisions of paragraph (a) above shall not apply to any Alteration which is (i) clearly of a minor nature and does not affect architectural, archaeological or historic values, or (ii) required to stabilize or prevent the loss of all or any portion of the Museum because of Casualty or other emergency, provided that prompt notice is given to Landlord, the State and the City of the need for such immediate action.

ARTICLE 8

UTILITIES AND OTHER SERVICES

Section 8.01 Available Utilities: Landlord will provide at points in or near the Leasehold Premises the facilities necessary to enable Tenant to obtain for the Leasehold Premises electric power, water, steam, sprinkler, sanitary sewer, telephone service and gas service. Tenant shall arrange directly with the public or private utility companies supplying telephone or other utilities (other than water for bathroom use) to the Leasehold Premises for the installation of utility meters and for the supply of such utilities as shall be necessary for the proper operation and functioning of the Leasehold Premises and Tenant shall pay directly to such utility companies (or to Landlord if the utility companies will not accept direct payments from Tenant) all charges for the installation and maintenance of such

meters and supply of such utilities used and consumed by Tenant in the Leasehold Premises.

Section 8.02 Electric Current: Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the Building or the risers or wiring installation and Tenant may not use any electrical equipment which, in Landlord's opinion, reasonably exercised, will overload such installation or interfere with the use thereof by other tenants of the Building.

Section 8.03 HVAC in Shared Facilities and Public Areas: Landlord will maintain heating and air conditioning services in the Shared Facilities and Public Areas on a seven-day basis in coordination with Museum operations. Consistency of temperature and humidity is a priority for Tenant which plans to operate utility systems servicing controlled environments for Museum collections on a 24-hour, seven-day a week basis.

Section 8.04 Responses to Interruptions in Utilities: Landlord and Tenant will work together to coordinate responses to any interruptions in utilities and Building systems in emergencies and under daily operations.

Section 8.05 Access to Meters: Both Landlord and Tenant will have access to meters, monitoring equipment, and machinery to ensure proper functioning.

Section 8.06 Elevators and Loading Dock: (a) During construction of Landlord's Work and Tenant's Work, Landlord's and Tenant's construction contractors will have the use of the southwest and southeast Building freight elevators, marked as #10 and #7 respectively, and the Loading Dock, marked as Room 153 on Exhibit A annexed hereto. If a disagreement arises Landlord's building operations representative will regulate the use thereof.

(b) Tenant will have access to the west front passenger elevators marked as #1, 2, and 3 on Exhibit A annexed hereto, the freight elevators, the Loading Dock, and other essential services and areas for exhibition installation, catering, and other museum-related functions during public and non-public hours.

(c) The west front passenger elevators will be dedicated to use by Tenant during its public hours and for after-hours functions, except for those authorized keyed access by Landlord. Reciprocity of east and west elevator bank use shall exist in the event of mechanical failure or repairs and performance maintenance and testing for code compliance.

(d) Uninterrupted use of the freight elevators for Tenant's needs will be coordinated with Landlord's building operations representative.

(e) Landlord will oversee the operation of the Loading Dock and will regulate the use thereof. For normal deliveries, materials will be removed from the Loading dock within two hours. Vehicles will be removed from the Loading Dock when delivery is completed.

(f) Tenant will require dedicated use of one truck bay for specific time periods in order to move Museum staff and collections, to install exhibitions, and to receive supplies for normal museum operations. Such use will be coordinated with Landlord's building operations representative.

(g) Tenant will provide security for its deliveries. Tenant will have access to shunt Landlord's perimeter security alarm system to operate the Loading Dock doors to receive deliveries. Notification of Tenant's deliveries at the Loading dock will be made through Landlord's intercom system directly to the Leasehold Premises.

Section 8.07 Extermination Services: Tenant requires extermination throughout the entire Building prior to its initial occupancy in order to remove rodents and pests. Because of the hazard to Museum collection materials, Landlord will thereafter control rodents and pests throughout the Building, coordinate treatment schedules, and explore methods to reduce the introduction of rodents and pests. Within one year after the execution of the Lease, Landlord and Tenant will collaborate to develop a written integrated pest management ("IPM") program to provide whole-Building strategies for inspections, monitoring and treatment using both chemical and passive pest control methodologies. Thereafter, once a year, the IPM program will be issued for a 30-day review and comment period and revised as mutually agreed between Landlord and Tenant. Tenant will reimburse Landlord as Additional Rent for pest control costs that

exceed Landlord's normal standards for annual comprehensive inspections of the Building, quarterly extermination, and 24-hour complaint response. After consultation with Landlord, Tenant may contract directly for pest control services in the Leasehold Premises at its sole cost and expense.

Section 8.08 No Services Other than as Specified: Except as expressly set forth herein, Landlord shall not be required to furnish any services to the Leasehold Premises. All services provided by Landlord shall be subject to available appropriations.

ARTICLE 9

REPAIR, MAINTENANCE AND SECURITY

Section 9.01 Repair and Maintenance by Landlord: (a)

Throughout the Term Landlord shall take good care of Landlord's Premises, the Shared Facilities, the Public Areas, Landlord's perimeter security system for the Building, and the Exterior Space and shall cause the same and every part thereof to be kept and maintained in good order and condition, and shall make all interior, exterior, non-structural and structural repairs and replacements thereto, including repair or replacement of the roof, windows, walls, ceilings, plumbing, heating and air conditioning systems and other structural and mechanical systems in Landlord's Premises, the Shared Facilities and the Public Areas, and shall repair and maintain any driveways, sidewalks,

and passageways located in the Exterior Space or in the Building in good, clean and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstruction.

(b) Landlord shall wash all interior and exterior windows in the Leasehold Premises, the Shared Facilities, and the Public areas at the same time as it washes the other interior and exterior windows in the Building.

(c) Landlord's building operations representative will periodically visit the Building, will be available for consultations with Tenant's building operations representative, and will be responsible for the operation of Landlord's Premises, the Public Areas, the Shared Facilities, and the Exterior Space; provided, however, that Tenant's building operations representative shall be responsible for the operation of the Public Areas and the Shared Facilities at such times as Tenant has the scheduled use of such space.

(d) The obligations of Landlord set forth above shall be subject to available appropriations.

Section 9.02 Repair and Maintenance by Tenant: (a) Throughout the Term, Tenant shall take good care of the Leasehold Premises, and when used by Tenant, the Shared Facilities and the Public Areas, and shall cause the Leasehold Premises and every part thereof to be kept and maintained in good order and condition, and shall be responsible for all interior, non-structural repairs and replacements to the Leasehold Premises, including repair or replacement of the electrical, plumbing,

heating and air conditioning systems dedicated to the Leasehold Premises.

(b) Tenant will have an employee present in the Building at all times who will act as the building operations representative.

(c) Tenant will provide Landlord access to the Leasehold Premises upon reasonable prior notice, or without notice in the case of an emergency (provided Landlord shall promptly notify Tenant following such emergency), to determine the necessity for maintenance of or repairs to the walls, ceilings and windows within the Leasehold Premises. Landlord and Tenant shall use all reasonable efforts to schedule such visits so as not to disrupt Museum operations.

Section 9.03 Repairs by Landlord if Tenant Fails to Proceed:

If Tenant fails, after thirty (30) days notice, or without notice in the case of an emergency, to proceed with due diligence to make repairs required to be made by Tenant, Landlord may make such repairs at Tenant's sole cost and expense after reasonable prior notice, or without notice in the case of an emergency (provided Landlord shall promptly notify Tenant following such emergency), and the expenses thereof incurred by Landlord shall be collectible, as Rental, after rendition of a bill therefor.

Section 9.04 Reimbursement for Acts or Omissions: Landlord and Tenant, respectively, shall reimburse the other party for the costs incurred for repairs necessitated by the acts or omissions of the other party, its employees, agents or invitees, subject to available appropriations.

Section 9.05 Maintenance of Tenant's Equipment: Tenant shall be responsible for operating and maintaining all of its Equipment located in the Leasehold Premises in good repair and safe condition and in such a manner as not to hinder the maintenance and operation of Landlord's Equipment or the Building systems.

Section 9.06 Casualty: The provisions of this Article 9 with respect to the making of repairs shall not apply in the case of a Casualty with regard to which Article 10 hereof shall apply.

Section 9.07 Security: (b) (7)(F)(b) (7)(F)(b) (7)(F)(b) (7)(F)(b) (7)(F)(b) (7)(F)

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ARTICLE 10

DAMAGE OR DESTRUCTION

Section 10.01 Restoration: (a) If the Building is Substantially Damaged or Destroyed, Landlord and Tenant shall jointly request appropriations from the United States Congress, pursuant to then current intergovernmental procedures, to Restore

the Building, provided that Landlord determines that such a Restoration is economically feasible given the extent of the destruction and the overall condition of the Building. In the event that (i) Congress fails to authorize such appropriations within twelve (12) months following Landlord's and Tenant's request, (ii) legislation authorizing such appropriations is vetoed by the President of the United States, or (iii) Landlord determines that such a Restoration is not economically feasible, Landlord may terminate this Lease by written notice to Tenant; provided, that, if only the Leasehold Premises are Substantially Damaged or Destroyed, Tenant may elect, by written notice to Landlord, within twelve (12) months after the occurrence of such Casualty, to Restore the Leasehold Premises, subject to the provisions of Section 10.02 and Section 10.04 hereof.

(b) Every Restoration undertaken by Tenant pursuant to the provisions of this Section 10.01 shall be commenced promptly and prosecuted with due diligence, Unavoidable Delays excepted.

Section 10.02 Costs of Restoration: Landlord shall bear the costs of Restoring Landlord's Premises, unless the damage is caused by the acts or omissions of Tenant, its employees, agents or invitees. Tenant shall bear the costs of Restoring the Leasehold Premises, unless the damage is caused by the acts or omissions of Landlord, its employees, agents or invitees. Landlord and Tenant, respectively, shall bear the costs of Restoring the Public Areas and the Shared Facilities, in the proportion to which Landlord's Floor Area plus Landlord's

Percentage of the Common Floor Area bears to Tenant's Floor Area plus Tenant's Percentage of the Common Floor Area (provided, however, that Tenant shall not bear such costs of Restoration if (x) such costs are for services normally provided to other tenants in the Building for which funds are appropriated to enable Landlord to reimburse the fund established by Section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)) and which would be included under the commercial charge which Landlord would charge Tenant pursuant to Section 210(j) of such Act (40 U.S.C. 490(j)) in the absence of the provisions of the NMAI Act or (y) Landlord is reimbursed from any other appropriation), unless the damage is caused by Landlord or Tenant, respectively, or their employees, agents or invitees. All costs of Restoration by Landlord shall be subject to available appropriations.

Section 10.03 Personal Property and Permanent Leasehold

Improvements: Tenant acknowledges that Landlord shall neither carry insurance on the Permanent Leasehold Improvements installed by Tenant or on Tenant's movable trade fixtures, furniture, machinery, equipment and contents (collectively "Personal Property") nor be obligated to repair and/or restore the same following damage thereto or destruction thereof by fire or other Casualty or by vandalism or theft, and that the insurance, repair and restoration of the Permanent Leasehold Improvements and/or Personal Property shall be the sole responsibility of Tenant.

Section 10.04 Requirements for Restoration: Tenant, in making any Restoration, shall comply with the same requirements governing Alterations as are set forth in Article 7, including Section 7.04, and Landlord shall have the same inspection rights as are set forth in Section 7.03.

ARTICLE 11

INSURANCE

Landlord and Tenant acknowledge that they are self-insured; provided, however, that Landlord and Tenant acknowledge that (i) Tenant shall require its Contractors to obtain and maintain insurance in connection with the performance of Tenant's Work or any Alterations or Restoration, and (ii) Landlord and Tenant may elect at any time to insure their interest in the Building, the Permanent Leasehold Improvements or the Personal Property.

ARTICLE 12

DISCHARGE OF LIENS

Section 12.01 Tenant to Discharge Liens: (a) Tenant agrees that at all times during the Term the Building and the Leasehold Premises shall be free and clear of all liens and encumbrances arising out of, or connected with, any construction by Tenant in the Leasehold Premises or any other use, non-use, possession, occupation, operation, maintenance or management of the Leasehold Premises.

(b) If any mechanic's laborer's, vendor's, materialman's or similar statutory lien at any time shall be filed against the Building or the Leasehold Premises or any part thereof arising out of, or connected with, any construction by Tenant in the Leasehold Premises or any other use, non-use, possession, occupation, operation, maintenance or management of the Leasehold Premises, Tenant, within thirty (30) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise.

Section 12.02 Landlord's Right to Discharge Liens: If Tenant shall fail to cause such lien forthwith to be so vacated or discharged within thirty (30) days after being notified of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may vacate or discharge the same by paying the amount claimed to be due or by bonding the same, and the amount so paid by Landlord, including reasonable expenses incurred by Landlord, either in defending against such lien or in procuring the vacatur or discharge of such lien, shall be due and payable by Tenant to Landlord as Rental upon demand.

Section 12.03 No Consent to Liens: Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer, or materialman for the performance of any labor or the furnishing of

any materials for any specific improvement, alteration, or repair with respect to the Leasehold Premises or any part thereof, nor as giving Tenant any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to filing of any lien against the Building or the Leasehold Premises or any part thereof. Notice is hereby given that Landlord shall not be liable for any work performed or to be performed or any materials furnished or to be furnished for Tenant with respect to the Leasehold Premises, and that no mechanic's or other lien for such work or materials shall attach to or affect the fee interest of Landlord in and to the Building.

ARTICLE 13

AS IS CONDITION

Neither Landlord nor any of Landlord's officials or employees have made any representations with respect to (i) the Leasehold Premises, (ii) the physical condition thereof, either on the date hereof or during the Term, (iii) the present or future suitability of the Leasehold Premises for any use, or (iv) any permits, rights or permissions with respect to the Leasehold Premises, except as set forth in Exhibit D, "Landlord's Work". Tenant has inspected the Leasehold Premises and is thoroughly acquainted with its condition and agrees to take same "as is" on the date hereof, provided that Landlord completes Landlord's Work.

ARTICLE 14
LANDLORD'S RIGHT TO PERFORM
TENANT'S COVENANTS

Section 14.01 Right to Cure: If Tenant shall at any time fail to cause to be paid, maintained or delivered any of the insurance policies provided for herein, or shall fail to pay any other sum, cost, expense, charge, payment or deposit payable by Tenant hereunder, or perform any other act on its part to be performed hereunder, then, without waiving or releasing Tenant from any obligation of Tenant contained in this Lease, Landlord may (but shall be under no obligation to) without notice in the case of an emergency (provided Landlord shall promptly notify Tenant following such emergency), and in any other case only if such default continues after the expiration of (i) fifteen (15) days from the date Landlord sends Tenant written notice of intention to do so, or (ii) the applicable grace period for the cure of such default, whichever occurs later:

(a) take out, pay for and maintain any of the insurance policies provided for herein, or;

(b) pay any other sum, cost, expense, charge, payment or deposit payable by Tenant hereunder, or perform any other act on Tenant's part to be made or performed as in this Lease provided, and upon the occurrence of an Event of Default, may enter upon the Leasehold Premises for the purpose and take all such action thereon as may be necessary therefor.

Section 14.02 Reimbursement: All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any act pursuant to Section 14.01 above shall be paid by Tenant to Landlord as Rental hereunder within thirty (30) days of rendition of any bill or statement to Tenant therefor. Any payment or performance by Landlord pursuant to the foregoing provisions of this Article 14 shall not be nor be deemed to be a waiver or release of the breach or default of Tenant with respect thereto or the right of Landlord to terminate this Lease if an Event of Default by Tenant shall have occurred.

ARTICLE 15

ASSIGNMENT OF LEASE; SUBLETTING

Section 15.01 Assignment: Tenant shall not have the right to assign this Lease, in whole or in part, nor any right or obligation provided for herein.

Section 15.02 Subletting: Tenant shall not have the right to sublease all or any portion of the Leasehold Premises.

ARTICLE 16

COMPLIANCE WITH LAWS

Landlord shall comply with all applicable provisions of

Federal law imposed upon it in its capacity as lessor under this Lease; provided, however, that nothing herein shall be construed as a waiver of Landlord's rights as a sovereign. Tenant shall obtain and pay for all required licenses and permits for its use of the Leasehold Premises. Tenant shall comply with all applicable provisions of law including, without limitation, Federal, state, county, and municipal laws, orders, requirements, ordinances, rules and regulations imposed upon it in its capacity as lessee under this Lease (collectively, "Requirements"); provided, however, that nothing herein shall be construed as a waiver of Tenant's rights as a sovereign.

ARTICLE 17

QUIET ENJOYMENT

Landlord covenants and agrees that Tenant, upon paying the Rental and all other charges herein provided for and upon observing and performing all the terms, covenants, agreements, and provisions of this Lease on its part to be observed and performed, shall quietly hold, occupy and enjoy the Leasehold Premises during the Term of this Lease unless terminated earlier as provided herein without hindrance or molestation by Landlord.

ARTICLE 18

UNAVOIDABLE DELAYS

Tenant shall not be deemed in default if it is delayed in the performance of any act, matter or thing which it is obligated to perform hereunder, including the payment of Rental, if such delay is an Unavoidable Delay. An "Unavoidable Delay" shall mean a delay due to (i) strikes, lockouts, or labor disputes; (ii) acts of God, enemy or hostile foreign governmental actions, civil commotion, insurrection, revolution, sabotage or fire or other casualty or other conditions similar to those enumerated in this Article beyond the control of Tenant; or (iii) lack of available appropriations; provided, however, that an Unavoidable Delay due to the lack of available appropriations shall not extend for more than one hundred and twenty (120) days. In the event of any Unavoidable Delay, all dates for performance shall automatically be extended by a period equal to the aggregate period of all such delays.

ARTICLE 19

BREACH OF THE LEASE TERMS

Section 19.01 Breach of the Lease Terms: (a) Each of the following events shall be deemed to be and is referred to in this Lease as a "Breach of the Lease Terms":

- (i) A default by Tenant in the due and punctual payment of Rental which continues for more than thirty (30) days after such Rental shall be due and payable, subject to Unavoidable Delays; or
- (ii) The neglect or failure of Tenant to (x) keep,

maintain and repair the Leasehold Premises as provided in Article 9 hereof more than once in any Lease Year or (y) to Substantially Complete Tenant's Work on or before the fourth anniversary of the date hereof, subject to Unavoidable Delays, which failure is not remedied within thirty (30) days following notice of such neglect or failure by Landlord to Tenant; provided, however, if the neglect or failure cannot be remedied with due diligence within the thirty (30) days an Event of Default shall not be deemed to have occurred so long as Tenant proceeds to remedy said neglect or failure with due diligence; or

(iii) The vacating or abandonment of the Leasehold Premises;

provided, however, that if Landlord and Tenant dispute whether Tenant is in default for failing to (x) pay Rental, (y) keep, maintain and repair the premises, or (z) Substantially Complete Tenant's Work on or before the date set forth above, no Breach of the Lease Terms shall be deemed to have occurred until (i) the party(s) resolving the dispute pursuant to Article 48 hereof shall have determined that Tenant is in default hereunder and (ii) Tenant shall have failed to cure such default within the cure periods set forth above.

(b) Upon the occurrence of a Breach of the Lease Terms, Landlord shall have the right, then or at anytime thereafter while such Breach of the Lease Terms shall continue, to give

Tenant written notice that this Lease will terminate on a date to be specified in such notice, which date shall be at least thirty (30) days after the giving of such notice, and upon the date specified in such notice, if the default which was the basis of the Breach of the Lease Terms shall not have been cured, Tenant's right to possession of the Leasehold Premises shall cease, this Lease shall thereupon be terminated, and Tenant will quit and surrender the Leasehold Premises to Landlord. Notwithstanding the foregoing, Tenant's right to possession shall not cease and this Lease shall not be terminated unless Landlord shall have notified in writing pursuant to then current intergovernmental procedures representatives of the New York State Office of the Attorney General, the New York State Office of Parks, Recreation and Historic Preservation, and The New York City Department of Cultural Affairs, each member of the United States House of Representatives and the United States Senate representing the people of New York State, the Appropriations Committees of the United States House of Representatives and the United States Senate, the Public Works and Transportation Committee and the House Administration Committee of the United States House of Representatives and the Select Committee on Indian Affairs and the Rules and Administration Committee of the United States Senate (or any successor committee(s) having jurisdiction over this project), and such New York State and City entities and such Committees of the United States House of Representatives and the United States Senate have advised Landlord that they will not (i) appropriate funds or otherwise make funds available or sponsor

legislation authorizing appropriations which will permit Tenant to cure the Breach of the Lease Terms or, (ii) in the event such New York State and City entities and/or such Committee(s) sponsor legislation authorizing appropriations which would permit Tenant to cure the Breach of the Lease Terms, such legislation is not passed by the appropriate legislative body after specifically considering that its failure to pass such legislation shall cause Landlord to terminate this Lease, or (iii) such legislation is vetoed by the responsible elected official (the President of the United States, the Governor of the State of New York, or the Mayor of the City of New York, as the case may be), and such New York State and City entities and/or such committees of the United States Senate and/or the United States House of Representatives have advised Landlord that they will not resubmit such legislation to the appropriate legislative body.

Section 19.02 Remedies: (a) If this Lease shall be terminated as hereinbefore provided, Landlord shall give Tenant written notice of such termination, and may reenter and repossess the Leasehold Premises not less than thirty (30) days after the giving of such notice. If Landlord shall so reenter, Landlord may, at its option, repair and alter the Leasehold Premises in such manner as Landlord may deem necessary or advisable and/or let or relet the Leasehold Premises or any part thereof for the whole or any part of the remainder of the Term or for a longer period in Landlord's name.

(b) If this Lease shall be terminated as hereinbefore provided, Tenant shall pay to Landlord all Rental payable under this Lease by Tenant to Landlord to the date upon which this Lease and the Term shall have expired and come to an end.

(c) No receipt of moneys by Landlord from Tenant after termination of this Lease, or after the giving of any notice of termination of this Lease, shall reinstate, continue or extend the Term of this Lease or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder, or operate as a waiver of the right of Landlord to recover possession of the Leasehold Premises by proper remedy, it being agreed that after the service of notice to terminate this Lease, Landlord may demand, receive and collect any moneys due without in any manner affecting such notice, all such moneys collected being deemed payments on account of the use and occupation of the Leasehold Premises.

(d) No failure by Landlord to insist upon the strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy consequent upon a breach thereof and no acceptance of full or partial Rental during the continuance of any such breach shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by Tenant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any breach shall

affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing subsequent breach thereof.

ARTICLE 20

SURRENDER

Section 20.01 Surrender Upon Expiration Date: Tenant shall, upon the Expiration Date and without any delay, well and truly surrender and deliver up to Landlord the Leasehold Premises in good order, condition and repair, reasonable wear and tear and damage by Casualty which, with Landlord's approval, was not Restored, excepted. Upon surrender as aforesaid the Leasehold Premises shall be free and clear of all lettings, occupancies, liens and encumbrances other than those, if any, existing at the date hereof.

Section 20.02 Delivery of Books and Records: Tenant shall deliver to Landlord on the Expiration Date Tenant's executed counterparts of any service and maintenance contracts then affecting the Leasehold Premises, all licenses and permits then pertaining to the Leasehold Premises, and all warranties and guarantees in connection with any work or services performed or Equipment installed in or with respect to the Leasehold Premises, together with a duly executed assignment of all of the foregoing to Landlord, all financial reports, books and records maintained

by Tenant in connection herewith and copies of any and all other documents of every kind and nature whatsoever in Tenant's possession relating to the Leasehold Premises.

Section 20.03 Definition of Permanent Leasehold

Improvements: At the Expiration Date all improvements to the Leasehold Premises made by Tenant as part of Tenant's Work or any subsequent Alterations made by Tenant (collectively, "Permanent Leasehold Improvements") shall, except as otherwise provided in Section 21.04 below, remain upon and be surrendered with the Leasehold Premises. As used herein, Permanent Leasehold Improvements shall be deemed to include, without limitation, all electric, plumbing, sprinkler, heating, air conditioning and lighting systems, fixtures, equipment, meters and related installations necessary for the operation thereof within or serving the Leasehold Premises and all other installations the removal of which will either cause damage to the Leasehold Premises, its appurtenances or any other portion of the Building or will render the item so removed inoperable or without significant value; provided, however, Permanent Leasehold Improvements shall not include Tenant's Personal Property.

Section 20.04 Removal of Permanent Leasehold Improvements by

Tenant: Landlord may, by notice to Tenant no later than thirty (30) days prior to the Expiration Date, elect to relinquish its rights to the Permanent Leasehold Improvements and to have them removed by Tenant at Tenant's expense. All property permitted or

required to be removed by Tenant remaining on the Expiration Date shall be deemed abandoned and may be retained as Landlord's property or removed by Landlord at Tenant's expense.

ARTICLE 21

EXAMINATION OF RECORDS

Tenant agrees that the Comptroller General of the United States, and the Administrator of General Services, or any of their duly authorized representatives, shall have access to and the right to examine records of Tenant upon reasonable notice and during normal business hours involving transactions related to this Lease or compliance with any clause hereunder pursuant to the provisions set forth in the additional clauses referenced in Article 49(1) and (m) annexed hereto.

ARTICLE 22

TAXES ON LEASEHOLD PREMISES

In the event that a state or local tax is imposed upon the occupancy, use, valuable possession, or valuable Leasehold interest in the Leasehold Premises, the obligation for the payment of the tax will be wholly that of Tenant.

ARTICLE 23

INFORMATIONAL DEVICES; SIGNS

Section 23.01 Public Address System: Tenant may install an independent public address system in the Leasehold Premises to announce special programs, reunite groups, and provide information in cases of emergency; provided, that Landlord shall be able to override Tenant's public address system for emergency announcements.

Section 23.02 Information Desks; Devices; Signs: (a) Tenant may construct and install information desks in easily identifiable locations in the Great Hall; provided, that Tenant will develop the design of the desks and a flexible signage system integrated with an overall graphic design program of the Building to be developed by Tenant in consultation with Landlord.

(b) Landlord and Tenant will coordinate and approve the design and physical placement of informational devices in Public Areas and the Shared Facilities in order to accommodate, inter alia, changes for Landlord's and outside parties' events, as well as announcements of Tenant's exhibitions, public program offerings, membership programs, special events and altered traffic patterns.

(c) Landlord and Tenant will coordinate and provide the design and physical placement of informational signage and display in the Rotunda in order to create and reinforce the Museum's identity, exhibition activities, and reception of all visitors.

(d) Landlord and Tenant will coordinate and approve the design and physical placement of Tenant's banners and signage external to the Building.

(e) Tenant may recognize donors by installing appropriate and tasteful plaques or similar acknowledgements within the Leasehold Premises in accordance with standard museum practices after prior consultation with Landlord and after obtaining any required historic preservation reviews.

ARTICLE 24

NOTICES

All notices required or permitted under the terms of this Lease to be given by either party to the other shall be in writing, and unless or until otherwise specified in writing by the respective parties, shall be sent to the parties at the following addresses:

To Landlord:

Director of Real Estate
Public Buildings Service
General Services Administration
Jacob K. Javits Federal Building
New York, N.Y. 10278

To Tenant:

Under Secretary
Smithsonian Institution
Washington, D.C. 20560

with copies to:

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All notices shall be deemed to have been properly served only if personally delivered or sent by registered or certified mail, postage prepaid, to the persons and addresses designated above (or to any other persons or addresses which either party may hereafter designate by written notice to the other party), and such service of any notices shall be considered as having been given on the date of actual receipt as evidenced by the signed receipt upon personal delivery or by the postal return receipt.

ARTICLE 25

NOTICE OF DAMAGE

Tenant shall give prompt notice to Landlord of any fire, accident, loss or damage or dangerous or defective condition materially affecting the Leasehold Premises or any part thereof or the fixtures or other property of Landlord therein, of which Tenant has any knowledge. Such notice shall not, however, be deemed or construed to impose upon Landlord any obligation to perform any work to be performed by Tenant under this Lease or not otherwise hereunder agreed to be performed by Landlord.

ARTICLE 26

SEPARABILITY

If any of the terms or provisions of this Lease or the

application thereof shall be held invalid or otherwise unenforceable, the remaining terms and provisions of this Lease and/or the application of such term or provision to persons or circumstances other than those to which the same were held invalid or unenforceable shall not be affected thereby and shall remain in full force and effect, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE 27

NON-MERGER

There shall be no merger of this Lease or the Leasehold estate created hereby with the fee estate in the Leasehold Premises or any part thereof by reason of the same person acquiring or holding, directly or indirectly, this Lease or the Leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Leasehold Premises.

ARTICLE 28

NO OTHER AGREEMENTS

This Lease, including the Exhibits hereto, contains all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relative to the leasing of the Leasehold Premises and there are no other promises, agreements,

conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied relative to the leasing of the Leasehold Premises, and any prior understandings and agreements between Landlord and Tenant are hereby merged in this Lease.

ARTICLE 29

NO ORAL WAIVER, CHANGE OR TERMINATION

This Lease or any of its provisions may not be waived, changed, modified or terminated orally, but only by a written instrument of waiver, change, modification or termination executed by the party against whom enforcement of any such waiver, change, modification or termination is sought.

ARTICLE 30

BINDING AGREEMENT

Neither the submission of this Lease form to Tenant nor the execution of this Lease by Tenant shall constitute an offer by Landlord to Tenant to lease the space herein described as the Leasehold Premises. This Lease shall not be or become binding upon Landlord to any extent or for any purpose unless and until it is executed by Landlord and a fully executed counterpart thereof is delivered to Tenant.

ARTICLE 31

CAPTIONS

The captions and the Table of Contents are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Lease nor the intent of any provision thereof.

ARTICLE 32

AGREEMENT FOR BENEFIT OF PARTIES

Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any individual or other entity, other than the parties hereto, any rights, remedies or claims under or by reason of this Lease or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto, their successors and assigns, subject to the rights granted to the State and the City pursuant to Articles 19 and 35 hereof.

ARTICLE 33

CONSTRUCTION OF LEASE

Both Landlord and Tenant have participated fully and equally in the preparation of this Lease; therefor, in the construction hereof, the rule of contra proferentem shall not be applied.

ARTICLE 34

PROVISIONS BINDING

Subject to the restrictions of Article 15 hereof, the provisions of this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

ARTICLE 35

CONSENT OF CITY AND STATE TO AMENDMENT

Landlord and Tenant agree that, unless Tenant first obtains the consent of the City and the State, they will not enter into any amendment of this Lease which would have the effect of:

- (i) Changing the description, including but not limited to the total square footage, of the Leasehold Premises;
- (ii) Interfering with Tenant's rights to use the Auditorium and Loading Dock in connection with its operation of the Museum;
- (iii) Reducing the Term of this Lease; or
- (iv) Adversely affecting Tenant's ability to design, construct and operate the Museum in accordance with the provisions of the NMAI Act, the MOU, the Implementation Agreement and the NMAI Implementation Agreement.

ARTICLE 36

OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to any corporation or company if the agreement be for the general benefit of such corporation or company.

ARTICLE 37

SAFETY AND FIRE PROTECTION

In the event of any criminal action, fire or accident for which medical assistance is required, Tenant shall notify the appropriate authority (police, fire department, ambulance), Landlord and Landlord's designated official in accordance with the Building Occupant Emergency Program, 41 CFR 101-20.103-4. All of the employees of Tenant shall be organized and trained regarding protection and responses to emergency situations. Landlord will maintain a communications system for notifying Tenant and all occupants of the Building in the event of an emergency. Tenant will be responsible for evacuating persons and for assisting in the safeguarding of lives and property and for minimizing danger due to fire and smoke, explosion, bomb threat, illness or injury, utility system failure, burglary and theft, or

other emergency in the Leasehold Premises and, to the extent being used by Tenant, the Public Areas and the Shared Facilities. This shall be accomplished with the cooperation of Tenant's and Landlord's building operations representative and designated official. Landlord shall cause a final Occupant Emergency Plan for the Building to be developed and provided to Tenant within one year from the date hereof which shall incorporate Tenant's own emergency requirements. Landlord and Tenant will review the plan annually thereafter to provide for additional Tenant requirements and changes in Building operations.

ARTICLE 38

WAIVER OF TAXES

Nothing expressed or implied herein shall be construed as an assumption by Landlord of any tax liability of Tenant, or as a waiver of any immunity enjoyed by either Landlord or Tenant.

ARTICLE 39

REAL ESTATE COMMISSIONS

Tenant warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee except bona fide employees or bona fide established commercial or selling agencies maintained by Tenant for the purpose of securing business. For breach or

violation of this warranty, Landlord shall have the right to annul this Lease without liability, or, in its discretion, to require Tenant to pay in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 40

NO DISCRIMINATION

Tenant agrees that it will comply with all applicable non-discrimination laws.

ARTICLE 41

NO RIGHT TO RELOCATION BENEFITS

Tenant acknowledges that it acquires no right by virtue of execution of this Lease to claim any benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

ARTICLE 42

MEMORANDUM FOR RECORDING

At the request of either party, Landlord and Tenant shall promptly execute, acknowledge and deliver a memorandum with respect to this Lease sufficient for recording and containing only the information required by Section 291-c of the Real

Property Law of the State of New York. Said memorandum shall not in any circumstances be deemed to change or otherwise affect any of the obligations or provisions of this Lease. Either party may record this Lease in the Office of the Register of the City of New York (New York County).

ARTICLE 43

ACTIONS AGAINST LANDLORD OR TENANT

If any claim is made or any action brought against Landlord or Tenant relating to this Lease wherein Landlord or Tenant is not a party, Tenant or Landlord, whichever, without compensation, shall diligently render to the other any and all assistance which Landlord or Tenant may reasonable require of the other.

ARTICLE 44

NO CLAIMS AGAINST OFFICERS, AGENTS OR EMPLOYEES.

No claim whatsoever shall be made by Landlord or Tenant against any officer, agent or employee of Landlord or Tenant for, or on account of, anything done or omitted to be done in connection with this Lease, provided such person was acting in his official capacity.

ARTICLE 45

LANDLORD/TENANT RELATIONSHIP

This Lease shall not be construed to create a partnership or joint venture between the parties, it being the intention of the parties only to create a landlord and tenant relationship in accordance with the provisions of the NMAI Act.

ARTICLE 46

LEASE CONSTRUED IN ACCORDANCE WITH FEDERAL LAW

This Lease, and all rights and obligations of the parties hereunder, shall be construed and determined in accordance with and governed by applicable Federal law, including the NMAI Act.

ARTICLE 47

RULES AND REGULATIONS

Tenant and Tenant's agents, employees, invitees or visitors, shall comply fully with the Rules and Regulations.

ARTICLE 48

RESOLUTION OF DISPUTES

All disputes arising hereunder between Landlord and Tenant shall be resolved as follows. Landlord and Tenant shall initially attempt to resolve such disputes through informal and good faith negotiations between Landlord's and Tenant's

respective building operations representatives and other appropriate staff. If the building operations representatives and staff cannot resolve the dispute, the matter shall be submitted to Landlord's and Tenant's contracting officers for discussion and resolution. If the contracting officers cannot resolve the dispute, the matter shall be submitted to Tenant's Secretary and Landlord's Administrator or Regional Administrator for discussion and resolution. If Tenant's Secretary and Landlord's Administrator or Regional Administrator cannot resolve the dispute, they shall refer the matter to (i) a third party mutually acceptable to both Landlord and Tenant or (ii) Landlord's Board of Contract Appeals for final resolution.

ARTICLE 49

ADDITIONAL CLAUSES

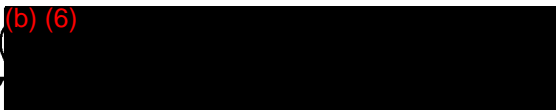
The following clauses are attached hereto and hereby made a part hereof. Wherever the words "Contractor", "Offeror" or "Lessee" are used they shall be deemed to mean the Tenant:

- a. INTENTIONALLY OMITTED.
- b. GSA FORM 1204, CONDITION SURVEY REPORT.
- c. CLEAN AIR AND WATER CLAUSE.
- d. UTILIZATION OF WOMEN OWNED BUSINESS.
- e. UTILIZATION OF SMALL BUSINESS.
- f. CERTIFICATION REGARDING PREVIOUS CRIMES AND DEFAULTS
ETC.
- g. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA
VETERANS AND HANDICAPPED WORKERS.

- h. EQUAL OPPORTUNITY CLAUSE.
- i. DRUG-FREE WORKPLACE.
- j. ANTI-LOBBYING PROVISION.
- k. COVENANT AGAINST CONTINGENT FEES.
- l. EXAMINATION OF RECORDS BY COMPTROLLER GENERAL.
- m. EXAMINATION OF RECORDS BY GSA.
- n. GRATUITIES CLAUSE.
- o. ANTI-KICKBACK CLAUSE.

IN WITNESS WHEREOF, Landlord and Tenant have executed this
Lease as of the day and year first above written.

UNITED STATES OF AMERICA
Acting by and through the
General Services Administration

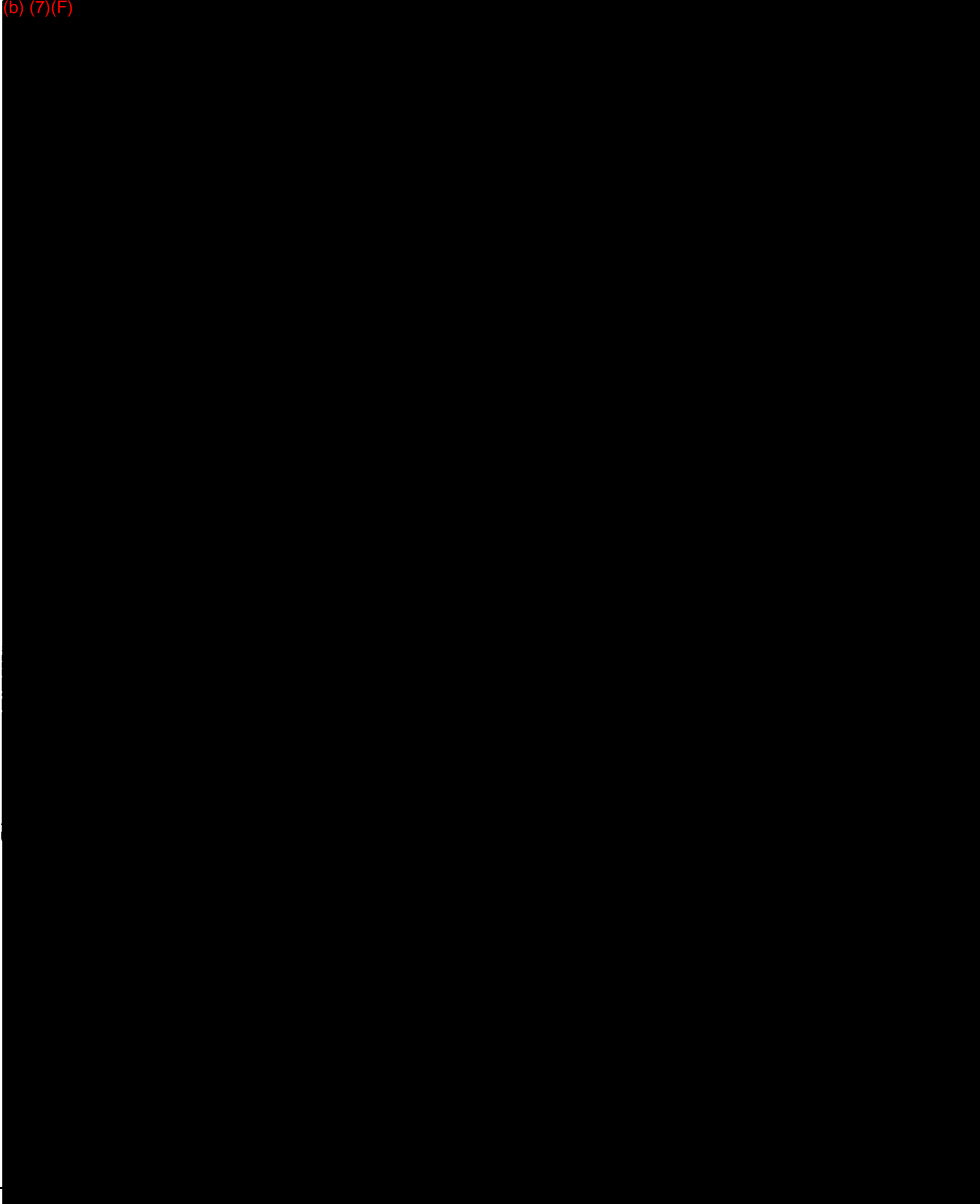
(b) (6)
By 

SMITHSONIAN INSTITUTION

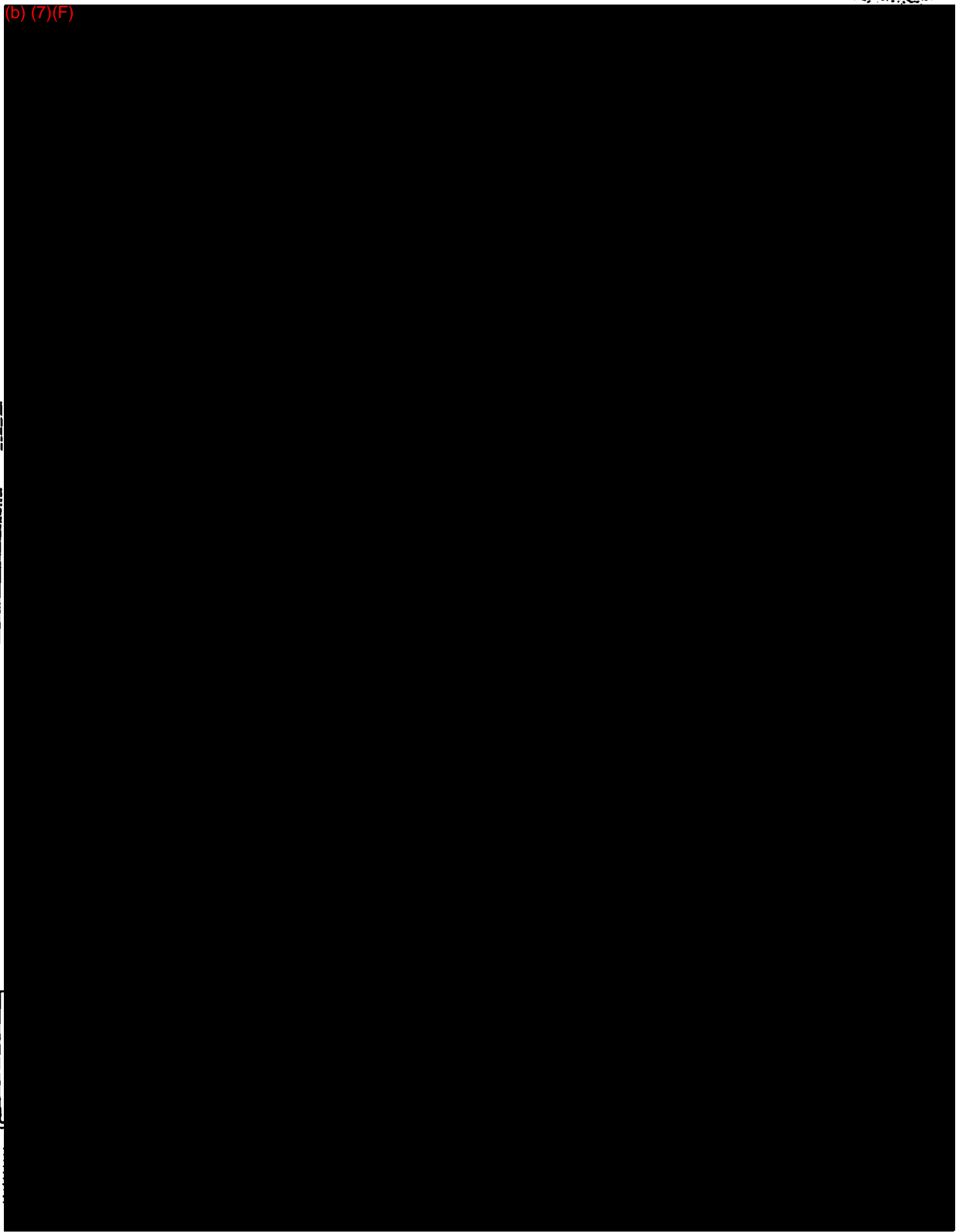
(b) (6)
By 

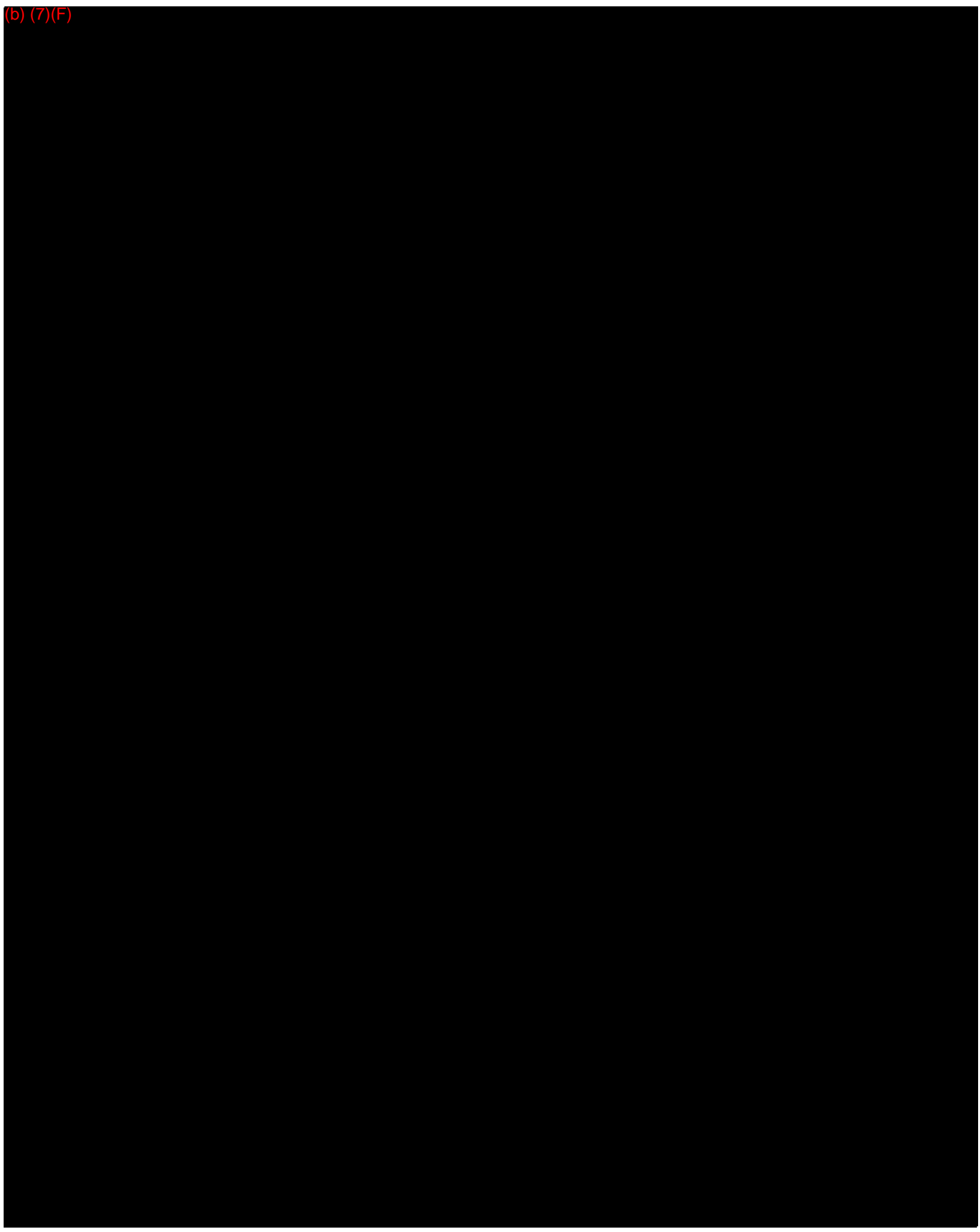
SPACE ASSIGNMENT PLAN

(b) (7)(F)

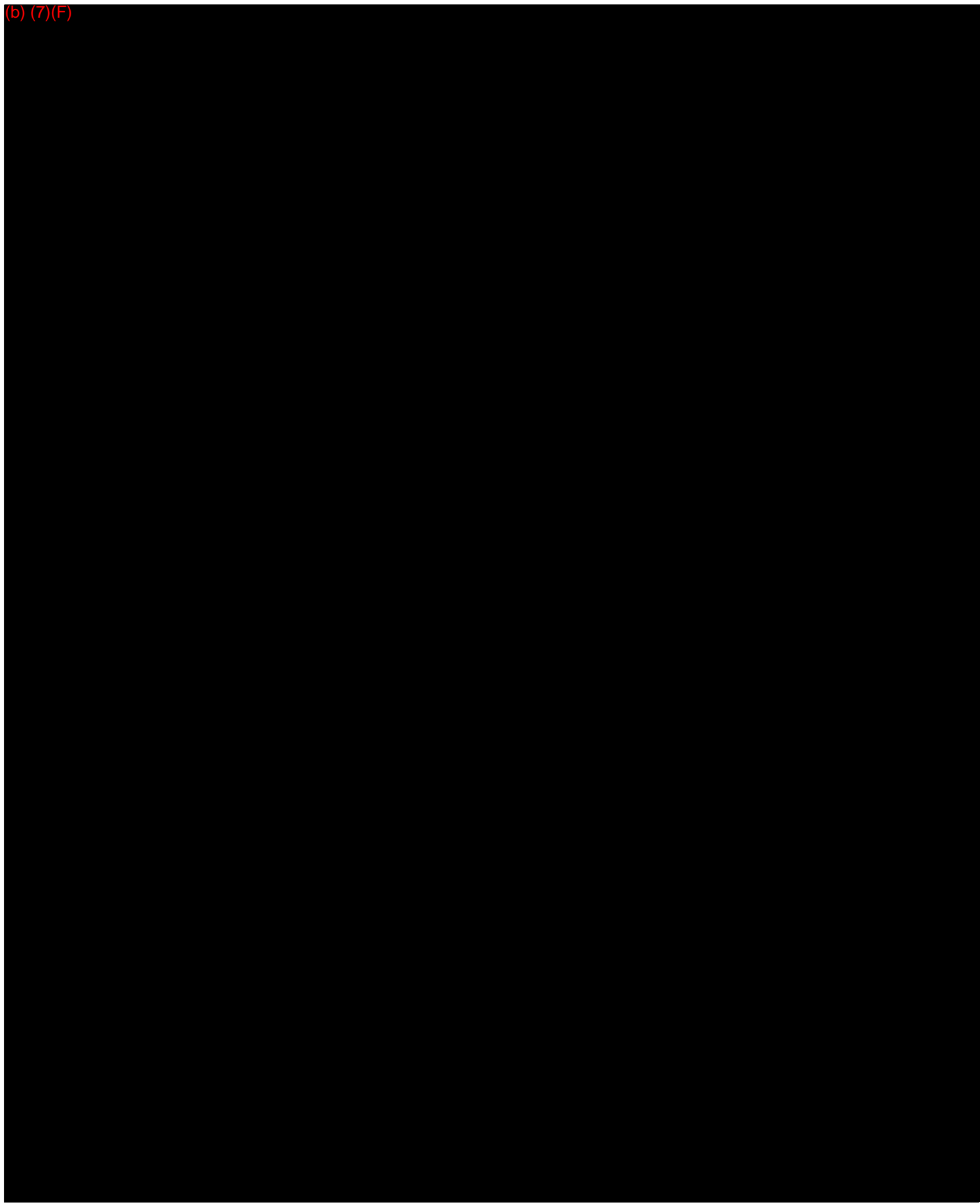


(b) (7)(F)





(b) (7)(F)



HEYE CENTER PUBLIC AREAS

ROOM NUMBER	DESIGNATION	SQ. FT.
241	EXHIBITION SPACE	1,955-
240	EXHIBITION SPACE	320-
233	EXHIBITION SPACE	1,840-
253	EXHIBITION SPACE	596-
252	EXHIBITION SPACE	5,540-
254	EXHIBITION SPACE	596-
283	EXHIBITION SPACE	1,840-
270	EXHIBITION SPACE	320-
271	EXHIBITION SPACE	<u>1,955-</u>
	SUBTOTAL	14,962
232	EDUCATION/WORKSHOP	1,000-
282	VIDEO/FILM VIEWING	680-
220	RESOURCE CENTER	<u>2,822-</u>
	TOTAL	19,464